

CAI
FS
-25L31



3 1761 11557764 5



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761115577645>

CAI
FS
- 25L31

DEPARTMENT OF MARINE AND FISHERIES
OTTAWA, CANADA

LIABILITIES OF CARRIERS BY WATER

Carriage of Goods by Sea Act, 1924

(14 and 15 Geo. V, Cap. 22) as passed by
the Imperial Parliament, compared with

Existing Canadian Law

as embodied in Part XVII of the Canada
Shipping Act (R.S.C. 1906 Cap. 113,) and
the Water-Carriage of Goods Act, (9-10
Edw. VII, Cap. 61, as amended by 1-2 Geo.
V, Cap. 27).

Prepared under the direction of
A. JOHNSTON,
Deputy Minister of Marine and Fisheries
by
H. E. A. HAWKEN

DEPARTMENT OF MARINE AND FISHERIES
OTTAWA, CANADA

LIABILITIES OF CARRIERS BY WATER

Carriage of Goods by Sea Act, 1924

(14 and 15 Geo. V, Cap. 22) as passed by
the Imperial Parliament, compared with

Existing Canadian Law

as embodied in Part XVII of the Canada
Shipping Act (R.S.C. 1906 Cap. 113,) and
the Water-Carriage of Goods Act, (9-10
Edw. VII, Cap. 61, as amended by 1-2 Geo.
V, Cap. 27).

Prepared under the direction of
A. JOHNSTON,
Deputy Minister of Marine and Fisheries
by
H. E. A. HAWKEN

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1925

26-10-93

CARRIAGE OF GOODS BY SEA ACT, 1924

(14 & 15 Geo. V, Cap. 22)¹ as passed by the Imperial Parliament,

COMPARED WITH

EXISTING CANADIAN LAW

as embodied in Part XVII of the Canada Shipping Act (Cap. 113, R.S.C. 1906)²
and the Water-Carriage of Goods Act 9-10 (Edw. VII, Cap. 61)³ as
amended by 1-2 Geo. V, Cap. 27

FOREWORD

I. History of the Imperial legislation:—

The Dominions Royal Commission in its final report of March, 1917, unanimously recommended for the reasons which were set out in detail in that report, that legislation on the lines of the Harter Act of the United States should be passed in the United Kingdom, the Union of South Africa and Newfoundland.

On the 26th July, 1918, the Imperial War Conference passed resolutions which recommended the appointment of an Imperial Investigation Board to inquire into and report, inter alia, on all matters connected with ocean freights and facilities, etc., and, on the 15th June, 1920, the then Prime Minister of the Imperial Government, Mr. D. Lloyd George, appointed the Imperial Shipping Committee. Sir George Perley, who was nominated by the Government of the Dominion of Canada, was a member of that Committee.⁴

The report of the Imperial Shipping Committee, dated the 25th February, 1921, unanimously recommended that there should be uniform legislation throughout the Empire on the lines of the existing Acts dealing with shipowners' liability but based on the Canadian Water-Carriage of Goods Act, 1910, with certain specified reservations.

The Maritime Law Committee of the International Law Association realizing that legislation in the United Kingdom and the British Dominions would not have a universal character, set to work to prepare an International Code, and a draft code was submitted in July, 1921, after meetings had been held in London and elsewhere by the interested parties,—shippers, consignees, bankers, underwriters and shipowners,—to consider the situation, and, eventually at a conference of the International Law Association held at the Hague in September, 1921, the *Hague Rules, 1921*, were agreed upon and resolutions were adopted recommending their coming into effect on all shipments after the 31st January, 1922.

The opposition of certain bodies to the *Hague Rules* in the precise form agreed upon at The Hague in 1921, and the insistence in certain quarters upon a compulsory rather than on a voluntary code led to further meetings between ship-owning and cargo interests culminating in an International Conference on Maritime Law held at Brussels in October, 1922, which was attended by representatives of 24 maritime states, when an agreement was reached by the delegates to recommend to their respective governments to adopt as a basis of a convention a draft convention for the unification of certain rules relating to Bills of Lading.

The Convention is based on the *Hague Rules, 1921*, and is substantially similar to those Rules.

¹ See page 15.

² See page 21.

³ See page 23.

⁴ Hon. P. C. Larkin is the present Canadian representative.

2. History of Canadian Legislation:—

By the "Act respecting Carriers by Water" passed in 1874 (37 Vic., Cap. 25) the Canadian Parliament defined in certain respects the liabilities and rights of carriers by water. This enactment now forms Part XVII of the Canada Shipping Act.¹

By Cap. 61, 9-10 Edward VII (Statutes of 1910), the Canadian Parliament enacted "The Water-Carriage of Goods Act."² This Act is based on the Harter Act of the United States and similar legislation passed in New Zealand and Australia.³

BRITISH ACT

Section 1.

Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods *by sea* in ships carrying goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland.

CANADIAN ACT

Section 3.

This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or *received to be carried* by such ships.

The British Act restricts the application of the Rules to *sea carriage* only. The Canadian Act extends to *all water carriage*.

BRITISH ACT

Section 2.

There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to *provide a seaworthy ship*.

CANADIAN ACT

Section 4.

Where any bill of lading or similar document of title to goods contains any clause, covenant or agreement whereby—

(b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, *and make and keep the ship seaworthy*, and make and keep the ship's hold, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation, are in any wise lessened, weakened or avoided;

.....

such clause, covenant or agreement shall be illegal, null and void, and of no effect, unless such clause, covenant or agreement is in accordance with the other provisions of this Act.

Section 4 of the Canadian Act in declaring certain exceptions void, does not, in terms, impose upon the shipowner and others the obligation to use the care and due diligence which he cannot relieve himself from. The common law, however, imposes this obligation, and Section 963 of the Canada Shipping Act gives it statutory form.

¹ See page 21.

² See page 23.

³ Sea Carriage of Goods Act, 1904. An Act to bring Australian law into agreement with the British Act has lately been passed in Australia.

BRITISH ACT

Section 3.

(1) Every bill of lading, or similar document of title, issued in Great Britain or Northern Ireland which contains or is evidence of any contract to which the Rules apply *shall contain an express statement that it is to have effect subject to the provisions of the said Rules*, as applied by this Act.

CANADIAN ACT

Section 5

Every bill of lading, or similar document of title to goods, relating to the carriage of goods from any place in Canada to any place outside of Canada *shall contain a clause to the effect that the shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in, this Act;*

and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

In his memorandum on the Canadian Water-Carriage of Goods Act, the late Mr. Peers Davidson, K.C., says that this clause was "possibly prompted by the clause found in many bills of lading, particularly English bills, giving exclusive jurisdiction to courts without Canada, in respect of any dispute between the interested parties, and, at times stipulating that all such disputes be determined by British or some foreign law. Our courts have dealt with such clauses, and, apparently, with approval."

"On the other hand, the United States courts have refused to recognize such clauses, on the ground that such stipulations are contrary to public policy.

"Our section 5 will probably leave to be determined the question as to whether 'British law' or 'the law of England' or the foreign law invoked, as the case may be, if applied as required by the bill of lading, would oust or lessen the jurisdiction of the Canadian courts, in view of the fact that they might, nevertheless, retain jurisdiction respecting the matters at issue, subject to the obligation to apply the English or foreign law.

"It is possible that our courts would hold in the affirmative, and would refuse to recognize such a clause, on the grounds of public policy, following the decisions in United States.

"The jurisdiction of English or foreign courts is, of course, unaffected."

BRITISH ACT

Section 4.

Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to a port in the Irish Free State, have effect as though the said Article referred to goods of any class instead of to particular goods, and as though the proviso to the second paragraph of the said Article were omitted.

CANADIAN ACT

Section 3.

This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or received to be carried by such ships.

Section 4 of the British Act is one of the amendments recommended by the Select Committee of the House of Lords who were appointed to join with a Committee of the House of Commons to consider the Bill. The effect of this Section is to relieve the coasting trade of Great Britain and Northern Ireland from the necessity of issuing Bills of Lading.

BRITISH ACT

Section 5.

Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

The object of Section 5 of the British Act is to relieve the carrier from the obligation of having to guarantee the weights of bulk cargo where under the custom of any trade the weight of such bulk cargo inserted in the Bill of Lading is a weight ascertained or accepted by a third party other than the carrier or the shipper. This amendment was also inserted by the Select Joint Committee to meet the demands of the coal-carrying trade who objected to the obligation thrown upon them by Article III (5) of the Rules.

The Canadian Act does not appear to differentiate between package freight or parcel cargoes, and bulk cargoes.

BRITISH ACT

Section 6.

(1) This Act may be cited as the Carriage of Goods *by sea* Act, 1924.

(2) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty,¹ both inclusive, five hundred and two, and five hundred and three² of the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

(3) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before such day, not being earlier than the thirtieth day of June, nineteen hundred and twenty-four, as His Majesty may by Order in Council direct,³ nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid in pursuance of any such contract as aforesaid.

CANADIAN ACT

Section 3.

This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or received to be carried by such ships.

CANADIAN ACT

Section 1.

This Act may be cited as the *Water-Carriage of Goods* Act.

Section 964, Canada Shipping Act.

Carriers by water shall be liable for the loss of or damage to goods entrusted to them for conveyance, except that they shall not be liable when such loss or damage happens,—

- (a) without their actual fault or privity, or without the fault or neglect of their agents, servants or employees; or,
- (b) by reason of fire or the dangers of navigation; or,
- (c) from any defect in or from the nature of the goods themselves; or,
- (d) from armed robbery or other irresistible force.

Section 15.

This Act shall not apply to any bill of lading or similar document of title to goods made pursuant to a contract entered into before this Act comes into force.

Section 16.

This Act shall come into force on the first day of September, one thousand nine hundred and ten.

¹ Dangerous goods—See also Sec. 722, Canada Shipping Act. Page 26.

² Limitation of Liability—See also Sec. 921, Canada Shipping Act. Page 28.

³ Made effective from January 1, 1925, by Order in Council dated October 9, 1924. See footnote, page 16.

SCHEDULE

Canadian Law

Rules relating to Bills of Lading

ARTICLE I

DEFINITIONS

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say:—

(a) "Carrier" includes *the owner or the charterer* who enters into a contract of carriage with a shipper:

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same:

(c) "Goods" includes goods, wares, merchandises and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried:

(d) "Ship" means any vessel used for the carriage of goods by sea:

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

(a) "Carrier" is not defined in the Canadian Acts. The expression used in Part XVII of the Canada Shipping Act is "Carriers by Water."

Sec 9 of the Water Carriage of Goods Act places the obligation to issue a bill of lading upon the *Owner, Charterer, Master or Agent*.

(b) "Contract of carriage" is not defined in the Canadian Acts.

(c) "Goods" is defined:

Sec. 961 (a) Canada Shipping Act—"goods" means and includes goods, wares, merchandise, and articles of any kind whatsoever:

(b) "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever.

Sec. 2 (a) Water Carriage of Goods Act—(as amended in 1911) "goods" includes goods, wares, merchandise, and articles of any kind whatsoever, except live animals; and lumber, deals and other articles usually described as 'wood goods.'

Deck cargo other than the above is not excluded.

(d) "Ship."—*Water Carriage of Goods Act Sec. 2.* (b) "ship" includes every description of vessel used in navigation not propelled by oars;

(e) "Carriage of goods" is not defined but under Canadian law the shipowner is responsible from the time the goods *are received* to be carried in or by the ship until the goods *are delivered* (Sec. 4. *Water Carriage of Goods Act*).

ARTICLE II

RISKS

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

RESPONSIBILITIES AND LIABILITIES

1. The carrier shall be bound, *before and at the beginning of the voyage*, to exercise due diligence to,—

- (a) *Make* the ship seaworthy;
- (b) Properly man, equip, and supply the ship;
- (c) *Make* the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and *carefully* load, *handle*, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things,—

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper *before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings*

By Article VI a carrier is allowed in certain circumstances to make agreements in terms other than those of the Rules. Under the Water Carriage of Goods Act (Secs. 4 and 12) there can be no contracting *out* and every term in a bill of lading or similar document lessening the liabilities imposed by the Act is illegal, null and void and of no effect.

1. In his memorandum on the Water Carriage of Goods Act, Mr. Peers Davidson, K.C., says:—

“Sec. 4 of the Water Carriage of Goods Act in declaring certain exceptions void, does not in terms, impose upon the shipowner and others the obligation to use the care and due diligence, which he cannot relieve himself from. The common law, however, imposes this obligation, and Section 963 of the Canada Shipping Act gives it statutory form. Carriers would be subject to one or the other.”

(a) to make and *keep* the ship seaworthy:

(c) to make and *keep*.

The Canadian Acts set no time limit such as “before and at the beginning of the voyage” and by the inclusion of the word “keep” the liability of the ship is increased.

2. The language of Section 4 (a) of the Water Carriage of Goods Act is “liability for loss or damage to goods arising from negligence, fault or failure in the proper loading, stowage, *custody*, care or *delivery* of goods received. . . . to be carried in or by the ship” and Section 4 (c) requires “the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them.”

3. Section 9 of the Water Carriage of Goods Act provides:—

“Every owner, charterer, master or agent of any ship carrying goods, shall on demand issue to the shipper of such goods a bill of lading showing, among other things, the marks necessary for identification as furnished in writing by the shipper, the number of packages or pieces, or the quantity or the weight, as the case may be, and the apparent order and condition of the goods *as delivered to or*

ARTICLE III—*Con.*

in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) *The apparent order and condition of the goods:*

Provided that, no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b), and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

received by such owner, charterer, master or agent; and such bill of lading shall be prima facie evidence of the receipt of the goods as therein described."

A similar provision is not found in Canadian law.

4. Section 9, Water Carriage of Goods Act.

5. Not in Canadian law.

6. Not in Canadian law.

ARTICLE III—*Con.*

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV

RIGHTS AND IMMUNITIES

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
- (b) Fire, unless caused by the actual fault or privity of the carrier;

7. While Section 3 of the Water Carriage of Goods Act applies to goods received for shipment, Section 9 only makes provision for one bill of lading. Presumably there would be no objection under the Canadian Act, to a carrier who had issued a bill of lading when the goods were received for shipment, subsequently indorsing it with the name of the ship on which the goods were forwarded and the date of shipment.

8. Section 4 of the Water Carriage of Goods Act. There is no mention anywhere in this Act or in the Canada Shipping Act that a "benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

Section 6 of the Water Carriage of Goods Act exempts the carrier from liability provided he "exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied." See also Section 4 (b) with regard to making and *keeping* the ship's hold, refrigerating and cooling chambers, etc., fit.

The last part of this clause, placing the burden of proof of unseaworthiness under the Rules upon the carrier or other person claiming exemption, is not found in Canadian law.

Under the Water Carriage of Goods Act (Sec. 6 and 7):—

- (a) Faults or errors in navigation or in the management of the ship (Sec. 6).
- (b) Fire (Sec. 7).

ARTICLE IV—*Con.*

- (c) Perils, dangers and accidents of the sea or other navigable waters;
- (d) Act of God;
- (e) Act of war;
- (f) Act of public enemies;
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process;
- (h) Quarantine restrictions;

ARTICLE IV

- (i) Act or omission of the shipper or owner of the goods, his agent or representative;
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) Riots and civil commotions;
- (l) Saving or attempting to save life or property at sea;
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (n) Insufficiency of packing;
- (o) Insufficiency or inadequacy of marks;
- (p) Latent defects not discoverable by due diligence;
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

- (c) Dangers of the sea or other navigable waters (Sec. 7).—The words “perils,” “accidents” do not appear.
- (d) Acts of God (Sec. 7).
- (e) Not in Canadian Act.
- (f) Acts of public enemies (Sec. 7).
- (g) “Arrest or restraint of princes, rulers, or people” is not in the Canadian Act. “Seizure under legal process” appears (Sec. 7).
- (h) Not in Canadian Act.

- (i) Same in Canadian Act (Sec. 7).
- (j) Canadian Acts (Sec. 7) “strikes” only.
- (k) Not in Canadian Act.
- (l) Same in Canadian Act (Sec. 7).
- (m) Canadian Act (Sec. 7) “inherent defect, quality or vice of the thing carried.”
- (n) Same in Canadian Act (Sec. 7).
- (o) Not in Canadian Act.
- (p) Same in Canadian Act (Sec. 6).
- (q) Practically the same in Canadian Act (Sec. 7), but the Canadian Act does not by enactment state where the onus of proof shall be placed.

3. No similar provision in the Water Carriage of Goods Act.

4. Section 7 of the Water Carriage of Goods Act provides for “saving or attempting to save life or property at sea, or from any deviation in rendering such service, or other reasonable deviation.”¹

¹ In connection with Sec. 7 of the Water Carriage of Goods Act see also R.S.C. of 1886, Chap. 82, Sec. 2, par. 4—page 25—and as revised in 1906, R.S.C., Chap. 113, Secs. 961 to 966—page 21—also Sec. 502, par. 2 (ii) Merchant Shipping Act, 1894.

ARTICLE IV—*Con.*

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding *100 pounds per package or unit, or the equivalent of that sum in other currency*, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

5. Section 8 of the Water Carriage of Goods Act provides:—

8. "The ship, the owner, charterer, master or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than *one hundred dollars* per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master or agent."

6. Sections 13 and 14 of the Water Carriage of Goods Act provide:—

13. "Every one who knowingly ships goods of an inflammable or explosive nature, or of a dangerous nature, without before shipping the goods making full disclosure in writing of their nature to, and obtaining the permission in writing of, the agent, master or person in charge of the ship, is liable to a fine of one thousand dollars."

14. "Goods of an inflammable or explosive nature, or of a dangerous nature, shipped without such permission from the agent, master or person in charge of the ship, may, at any time before delivery, be destroyed or rendered innocuous, by the master or person in charge of the ship, without compensation to the owner, shipper or consignee of the goods; and the person so shipping the goods shall be liable for all damages directly or indirectly arising out of such shipment."

See also Secs. 713, 722 and 723 of the Canada Shipping Act at page 26.

ARTICLE V

SURRENDER OF RIGHTS AND IMMUNITIES, AND
INCREASE OF RESPONSIBILITIES AND
LIABILITIES

A Carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

SPECIAL CONDITIONS

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII

LIMITATION ON THE APPLICATION OF THE
RULES

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and

The Canadian Act contains no clause of a similar nature. Apparently under Canadian law in the case of goods for export if a bill of lading is demanded (Section 9) it must issue subject (Sec. 5) to all the terms and conditions and all the exemptions from liability contained in the Canadian Act. Presumably a shipper and carrier could enter into a private agreement at any rate as far as coastwise trade is concerned.

No one can contract out under the Canadian Act. See Section 4 of the Water Carriage of Goods Act.

While there can be no contracting out under Canadian law, presumably there is nothing to prevent a carrier accepting greater responsibilities or liabilities than imposed on him by law.

The Water Carriage of Goods Act covers goods from their reception to their delivery. See Section 4.

ARTICLE VII—*Con.*

liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII

LIMITATION OF LIABILITY

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

See Section 921 of the Canada Shipping Act at page 28.

ARTICLE IX

The monetary units mentioned in these Rules are to be taken to be gold value.

Not in Canadian law.

There are several clauses in the Canadian Water Carriage of Goods Act which are not paralleled in the British Act and the Rules. They are as follows:—

“5. Every bill of lading or similar document of title to goods relating to the carriage of goods from any place in Canada to any place outside of Canada shall contain a clause to the effect that the shipment is subject to all the terms and provisions of and all the exemptions from liability contained in, this Act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document of title, shall be illegal, null and void and of no effect.”

“11. When a ship arrives at a port where goods carried by the ship are to be delivered, the owner, charterer, master or agent of the ship shall forthwith give such notice as is customary at the port, to the consignees of goods to be delivered there, that the ship has arrived.

“12. Every one, who, being the owner, charterer, master or agent of a ship,—

(a) inserts in any bill of lading or similar document of title to goods any clause, covenant or agreement declared by this Act to be illegal; or makes, signs, or executes any bill of lading or similar document of title to goods containing any clause, covenant or agreement declared by this Act to be illegal;

without incorporating verbatim, in conspicuous type, in the same bill of lading or similar document of title to goods, section 4 of this Act; or,

(b) refuses to issue to a shipper of goods a bill of lading as provided by this Act; or,

(c) refuses or neglects to give the notice of arrival of the ship required by this Act;

is liable to a fine not exceeding one thousand dollars, with cost of prosecution; and the ship may be libelled therefor in any Admiralty District in Canada within which the ship is found.

2. Such proportion of any penalty imposed under this section as the court deems proper, together with full costs, shall be paid to the person injured, and the balance shall belong to His Majesty for the public uses of Canada.”

CARRIAGE OF GOODS BY SEA ACT, 1924

[14 & 15 GEO. V. CH. 22]

ARRANGEMENT OF SECTIONS

Section

A.D. 1924.

1. Application of Rules in Schedule.
2. Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.
3. Statement as to application of Rules to be included in bills of lading.
4. Modification of Article VI of Rules in relation to coasting trade.
5. Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.
6. Short title, saving, and operation.

SCHEDULE.

CHAPTER 22

An Act to amend the law with respect to the carriage of goods by sea. [1st August, 1924.]

WHEREAS at the International Conference on Maritime Law held at Brussels in October, 1922, the delegates at the Conference, including the delegates representing His Majesty, agreed unanimously to recommend their respective Governments to adopt as the basis of a convention a draft convention for the unification of certain rules relating to bills of lading:

And whereas at a meeting held at Brussels in October, 1923, the rules contained in the said draft convention were amended by the Committee appointed by the said Conference:

And whereas it is expedient that the said rules as so amended and as set out with modifications in the Schedule to this Act (in this Act referred to as "the Rules") should, subject to the provisions of this Act, be given the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland.

Application of Rules in Schedule.

2. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.

Statement as
to application
of Rules to
be included in
bills of lading.

3. Every bill of lading, or similar document of title, issued in Great Britain or Northern Ireland which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

Modification
of Article VI
of Rules in
relation to
coasting trade.

4. Article VI of the Rules shall, in relation to the carriage of goods by sea in ships carrying goods from any port in Great Britain or Northern Ireland to any other port in Great Britain or Northern Ireland or to a port in the Irish Free State, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification
of Rules 4
and 5 of
Article III
in relation to
bulk cargoes.

5. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *primâ facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Short title,
saving, and
operation.

6. (1) This Act may be cited as the Carriage of Goods by Sea Act, 1924.

57 & 58 Vict.
c. 60.

(2) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two, and five hundred and three of the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

(3) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before such day, not being earlier than the thirtieth day of June, nineteen hundred and twenty-four, as His Majesty may by Order in Council direct, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.*

SCHEDULE

RULES RELATING TO BILLS OF LADING

ARTICLE I.

DEFINITIONS

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

* By Order in Council dated 9th October, 1924, "The Carriage of Goods by Sea Order, 1924," was made under which the Rules were made effective 1st January, 1925.

- (b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relation between a carrier and a holder of the same: A.D. 1924.
- (c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried:
- (d) "Ship" means any vessel used for the carriage of goods by sea:
- (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II

RISKS

Subject to the provisions of Article VI., under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

RESPONSIBILITIES AND LIABILITIES

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

- (a) Make the ship seaworthy:
- (b) Properly man, equip, and supply the ship:
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV., the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) The apparent order and condition of the goods:

A.D. 1924.

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *primâ facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b), and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *primâ facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

RIGHTS AND IMMUNITIES

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship:
- (b) Fire, unless caused by the actual fault or privity of the carrier:
- (c) Perils, dangers and accidents of the sea or other navigable waters:
- (d) Act of God:
- (e) Act of war:
- (f) Act of public enemies:
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process:
- (h) Quarantine restrictions:
- (i) Act or omission of the shipper or owner of the goods, his agent or representative:
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general:
- (k) Riots and civil commotions:
- (l) Saving or attempting to save life or property at sea:
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods:
- (n) Insufficiency of packing:
- (o) Insufficiency of inadequacy of marks:
- (p) Latent defects not discoverable by due diligence:
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

A.D. 1924.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100*l.* per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE V

SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

SPECIAL CONDITIONS

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such

goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such. A.D. 1924.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII

LIMITATIONS ON THE APPLICATION OF THE RULES

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII

LIMITATION OF LIABILITY

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

The monetary units mentioned in these Rules are to be taken to be gold value.

PART XVII

CANADA SHIPPING ACT

LIABILITIES OF CARRIERS BY WATER

Interpretation

961. In this Part, unless the context otherwise requires,—

- (a) 'goods' means and includes goods, wares, merchandise, and articles of any kind whatsoever;
- (b) 'valuable securities' includes every document forming the title or evidence of the title to any property of any kind whatsoever. R.S., c. 82, s. 1.

Definitions.
"Goods."

"Valuable securities."

Responsibility of Carriers

Must convey
passengers
and goods.

962. Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey according to such notice all persons applying for passage, and all goods offered for conveyance, unless, in either case, there is reasonable and sufficient cause for not doing so. R.S., c. 82, s. 2.

Responsibility
for goods.

963. Carriers by water shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe-keeping and punctual conveyance of such goods, subject to the provisions hereinafter made. R.S., c. 82, s. 2.

Loss or
damage,
liability for.

964. Carriers by water shall be liable for the loss of or damage to goods entrusted to them for conveyance, except that they shall not be liable when such loss or damage happens,—

- (a) without their actual fault or privity, or without the fault or neglect of their agents, servants or employees; or,
- (b) by reason of fire or the dangers of navigation; or,
- (c) from any defect in or from the nature of the goods themselves; or,
- (d) from armed robbery or other irresistible force R.S., c. 82, s. 2.

Responsibility
as to gold
and silver.

965. Carriers by water shall not be liable for any total or partial loss of gold or silver, diamonds, watches, jewels or precious stones, money or valuable securities or articles of great value not being ordinary merchandise, by reason of any robbery, theft, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier or his agent or servant, and entered in the bill of lading or otherwise in writing. R.S., c. 82, s. 2.

Personal
baggage of
passengers.

966. Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels: Provided that such liability shall not extend to any greater amount than five hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in the last preceding section, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said section. R.S., c. 82, s. 3.

9-10 EDWARD VII.

CHAP. 61

An Act respecting the Water-Carriage of Goods.

[Assented to 4th May, 1910.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as the *Water Carriage of Goods Act*. Short title.
 2. In this Act, unless the context otherwise requires:— Interpretation.
 - (a) “goods,” includes goods, wares, merchandise, and articles of any kind whatsoever¹, ~~but does not include live animals, except live animals and lumber, deals and other articles usually described as ‘wood-goods’.~~ “Goods.”
 - (b) “ship” includes every description of vessel used in navigation not propelled by oars; “Ship.”
 - (c) “port” means a place where ships may discharge or load cargo. “Port.”
 3. This Act applies to ships carrying goods from any port in Canada to any other port in Canada, or from any port in Canada to any port outside of Canada, and to goods carried by such ships, or received to be carried by such ships. Application of Act.
 4. Where any bill of lading or similar document of title to goods contains any clause, covenant or agreement whereby— Certain clauses prohibited in bill of lading.
 - (a) the owner, charterer, master or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from negligence, fault, or failure in the proper loading, stowage, custody, care or delivery of goods received by them or any of them to be carried in or by the ship; or,
 - (b) any obligations of the owner or charterer of any ship to exercise due diligence to properly man, equip, and supply the ship, and make and keep the ship seaworthy, and make and keep the ship’s hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation, are in any wise lessened, weakened or avoided; or,
 - (c) the obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them, are in any wise lessened, weakened or avoided;
- such clause, covenant or agreement shall be illegal, null and void, and of no effect, unless such clause, covenant or agreement is in accordance with the other provisions of this Act.
5. Every bill of lading, or similar document of title to goods, relating to the carriage of goods from any place in Canada to any place outside of Canada shall contain a clause to the effect that the shipment is subject to all the terms and provisions of, and all the
- Express reference to be made to this Act.

¹ The change in this section was made by Cap. 27—Statutes of 1911.

Jurisdiction.	exemptions from liability contained in, this Act; and any stipulation or agreement purporting to oust or lessen the jurisdiction of any court having jurisdiction at the port of loading in Canada in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.
Limitation of owner's liability.	6. If the owner of any ship transporting merchandise or property from any port in Canada exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped and supplied, neither the ship nor the owner, agent or charterer shall become or be held responsible for loss or damage resulting from faults or errors in navigation or in the management of the ship, or from latent defect
Loss for which the ship, the owner, etc., is not liable.	7. The ship, the owner, charterer, agent or master shall not be held liable for loss arising from fire, dangers of the sea or other navigable waters, acts of God or public enemies, or inherent defect, quality or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act of omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service, or other reasonable deviation, or from strikes, or for loss arising without their actual fault or privity or without the fault or neglect of their agents, servants or employees.
Limit of liability as to value of goods.	8. The ship, the owner, charterer, master or agent shall not be liable for loss or damage to or in connection with goods for a greater amount than one hundred dollars per package, unless a higher value is stated in the bill of lading or other shipping document, nor for any loss or damage whatever if the nature or value of such goods has been falsely stated by the shipper, unless such false statement has been made by inadvertence or error. The declaration by the shipper as to the nature and value of the goods shall not be considered as binding or conclusive on the ship, her owner, charterer, master or agent.
Effect of declaration.	
Bill of lading to be issued to shipper.	9. Every owner, charterer, master or agent of any ship carrying goods, shall on demand issue to the shipper of such goods a bill of lading showing, among other things, the marks necessary for identification as furnished in writing by the shipper, the number of packages or pieces, or the quantity or the weight, as the case may be, and the apparent order and condition of the goods as delivered to or received by such owner, charterer, master or agent; and such bill of lading shall be <i>prima facie</i> evidence of the receipt of the goods as therein described.
Contents.	
Effect as evidence.	
	10. Repealed. Cap 27-1911.
Notice of arrival of ship.	11. When a ship arrives at a port where goods carried by the ship are to be delivered, the owner, charterer, master or agent of the ship shall forthwith give such notice as is customary at the port, to the consignees of goods to be delivered there, that the ship has arrived.

12. Every one who, being the owner, charterer, master or agent of a ship,— Offences.

- (a) inserts in any bill of lading or similar document of title to goods any clause, covenant or agreement declared by this Act to be illegal; or makes, signs, or executes any bill of lading or similar document of title to goods containing any clause, covenant or agreement declared by this Act to be illegal; Making illegal or defective bills of lading.

without incorporating *verbatim*, in conspicuous type, in the same bill of lading or similar document of title to goods section 4 of this Act; or,

- (b) refuses to issue to a shipper of goods a bill of lading as provided by this Act; or, Refusal to issue.
 (c) refuses or neglects to give the notice of arrival of the ship required by this Act; Refusal to give notice.

is liable to a fine not exceeding one thousand dollars, with cost of prosecution; and the ship may be libelled therefor in any Admiralty District in Canada within which the ship is found. Penalty.

2. Such proportion of any penalty imposed under this section as the court deems proper together with full costs, shall be paid to the person injured, and the balance shall belong to His Majesty for the public uses of Canada. Disposal of penalty.

13. Every one who knowingly ships goods of an inflammable or explosive nature, or of a dangerous nature, without before shipping the goods making full disclosure in writing of their nature to, and obtaining the permission in writing of, the agent, master or person in charge of the ship, is liable to a fine of one thousand dollars. Shipping inflammable explosives or dangerous goods.

14. Goods of an inflammable or explosive nature, or of a dangerous nature, shipped without such permission from the agent, master or person in charge of the ship, may, at any time before delivery, be destroyed or rendered innocuous, by the master or person in charge of the ship, without compensation to the owner, shipper or consignee of the goods; and the person so shipping the goods shall be liable for all damages directly or indirectly arising out of such shipment. Penalty. Master may destroy such goods, if shipped without disclosure. Shipper liable for damages.

15. This Act shall not apply to any bill of lading or similar document of title to goods made pursuant to a contract entered into before this Act comes into force. Act not retroactive.

16. This Act shall come into force on the first day of September, one thousand nine hundred and ten. Commencement of Act.

CHAPTER 82

An Act respecting the liability of Carriers by Water

HER MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— A.D. 1886.

1. In this Act, unless the context otherwise requires,— Interpretation.

- (a) The expression “goods” means and includes goods, wares, merchandise, and articles of any kind whatsoever; “Goods.”

"Valuable securities."

(b) The expression "valuable securities" includes every document forming the title or evidence of the title to any property of any kind whatsoever. 37 V, c. 25, s. 3.

Carrier by water to receive and convey passengers and goods.

2. Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey according to such notice, all persons applying for passage, and all goods offered for conveyance, unless in either case there is reasonable and sufficient cause for not doing so:

Responsibility as to goods received by and delivered to them.

2. They shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe keeping and punctual conveyance of such goods, subject to the provisions hereinafter made:

Loss or damage.

3. They shall be liable for the loss of or damage to goods intrusted to them for conveyance as aforesaid:

Proviso: Exception in certain cases.

4. Provided, that they shall not be liable to any extent whatsoever to make good any loss or damage happening without their actual fault or privity, or the fault or neglect of their agents, servants or employees,—

Fire, etc.

(a) To any goods on board any such vessel, or delivered to them for conveyance therein, by reason of fire or the dangers of navigation;

Nature of goods. Robbery.

(b) Arising from any defect in or from the nature of the goods themselves, or from armed robbery or other irresistible force;

Valuables, unless value has been declared.

(c) To any gold, silver, diamonds, watches, jewels or precious stones, money or valuable securities or article of great value not being ordinary merchandise, by reason of any robbery, theft, embezzlement, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier or his agent or servant, and entered in the bill of lading or otherwise in writing. 37 V, c. 25, s. 1.

As to loss or damage to personal baggage of passengers.

3. Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels; and the oath or affirmation of any such passenger shall be *prima facie* evidence of the loss of or damage to such articles, and of their value; Provided that such liability shall not extend to any greater amount than five hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in the next preceding section, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said section. 37 V, c. 25, s. 2.

Liability limited.

CANADA SHIPPING ACT

713. The master or owner of any ship registered in Canada not carrying passengers may refuse to take on board any package or parcel which he suspects to contain goods of a dangerous nature, and may require it to be opened to ascertain the fact. R.S., c. 77, s. 17.

722. Every person who sends or attempts to send by, or not being the master or owner of the ship, carries or attempts to carry in any ship registered in Canada from any port or place in Canada, any dangerous goods without distinctly marking their nature on the

outside of the package containing the same, and giving written notice of the nature of such goods, and of the name and address of the sender thereof, to the master or owner of the ship, at or before the time of sending the same to be shipped or taking the same on board the ship, shall, for every such offence, incur a penalty not exceeding five hundred dollars: Provided that if such person shows that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, the penalty to which he is liable shall not exceed forty dollars.

2. Every person who knowingly sends, or attempts to send by, or carries or attempts to carry in any ship registered in Canada, from any port or place in Canada, any dangerous goods, or goods of a dangerous nature under a false description, or falsely describes the sender or carrier thereof, shall incur a penalty not exceeding two thousand dollars.

3. When any dangerous goods or any goods which, in the judgment of the master or owner, are goods of a dangerous nature, are, within the limits of Canada, sent on board any ship registered in Canada, without being so marked, or without such notice being given, the master or owner of such ship may cause such goods to be thrown overboard; and neither the master nor the owner of the ship shall, in respect of such throwing overboard, be subject to any liability, civil or criminal, in any court in Canada.

4. When any dangerous goods are sent or attempted to be sent, or carried or attempted to be carried on board any ship registered in Canada, within the limits of Canada, without being marked as aforesaid, or without such notice having been given, as aforesaid, and, when any such goods are sent or attempted to be sent under a false description, or the sender or carrier thereof is falsely described, any court of record, on application by or on behalf of the owner, charterer or master of the ship, may declare such goods forfeited, and when forfeited, they shall be disposed of as the court directs

5. This section shall not, except in so far as it is not inconsistent with the provisions of the next following section, apply to ships carrying passengers. R.S., c. 77, ss. 14, 15, 16, 18 and 19; 54-55 V, c. 38, s. 1.

723. Every person who knowingly sends or attempts to send by, or carries or attempts to carry in any ship registered in Canada and carrying passengers to or from any port in Canada, or in any ship registered elsewhere than in Canada, but carrying passengers between any places in Canada, or from any place in Canada to any place out of Canada, any gunpowder, except as hereafter provided, dynamite, nitro-glycerine, or any dangerous explosive, is guilty of an indictable offence, and shall be liable to a fine not exceeding two hundred dollars, or to imprisonment for a term not exceeding three months, or to both; and such goods shall be forfeited to the Crown, and shall be dealt with accordingly: Provided that,—

- (a) any such ship may carry gunpowder in sufficient quantity to make necessary signals for one round voyage or trip, if such gunpowder is stored or carried in such a place and in such a manner as are approved by a steamboat inspector;

- (b) the Minister may grant a permit to any steamboat which is engaged chiefly in the carriage of freight and only incidentally in the carriage of passengers, and which is specially fitted for the carriage of explosives, to carry explosives upon such terms and conditions and in such manner as are specified in the said permit; but if the terms and conditions of such permit are not performed and complied with, this section shall apply to such steamboat, as if the said permit had not been granted.

2. No prosecution under this section shall be instituted except by or with the consent of the Minister. 54-55, V, c. 38, s. 1.

921. The owners of any ship, whether British, Canadian or foreign, shall not, whenever without their actual fault or privity,—

- (a) any loss of life or personal injury is caused to any person being carried in such ship; or,
- (b) any damage or loss is caused to any goods, merchandise or other things whatsoever on board any such ship; or,
- (c) any loss of life or personal injury is, by reason of the improper navigation of such ship as aforesaid, caused to any person in any other ship or boat; or,
- (d) any loss or damage, is, by reason of the improper navigation of such ship as aforesaid, caused to any other ship or boat, or to any goods, merchandise or other things whatsoever on board any other ship or boat;

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise or other things, or in respect of loss or damage to ships, goods, merchandise or other things, whether there is in addition loss of life or personal injury or not, to an aggregate amount exceeding thirty-eight dollars and ninety-two cents for each ton of the ship's tonnage. R.S., c. 79, s. 12.

Governme
Publicati

